CHAPTER V

MISCELLANEOUS STATUTORY REQUIREMENTS

OVERVIEW

All RCRA provisions do not fit neatly into the solid waste, hazardous waste, and underground storage tank (UST) regulatory frameworks. The Statute established additional miscellaneous provisions to further the goals of the waste management program, and to address materials that were not covered by Subtitles C, D, or I.

The first set of these miscellaneous statutory provisions focuses on promoting recycling and developing a market for products with recycled content: the federal procurement requirements.

The second set of miscellaneous statutory provisions focuses on certain materials that were not covered by Subtitles C, D, or I: namely, medical wastes. These requirements imposed a tracking system to ensure the safe and protective management of potentially harmful wastes.

This chapter consists of two sections:

- Federal Procurement Requirements — To promote recycling, encourage the development of recycling technologies, and develop the market for products with recycled content, RCRA contains specific federal procurement requirements.
- Medical Waste Regulations — To ensure the tracking and safe management of medical waste, RCRA established a medical waste demonstration program.

PROMOTION OF RECYCLING AND FEDERAL PROCUREMENT REQUIREMENTS FOR RECOVERED CONTENT PRODUCTS

In this chapter…

OVERVIEW

The purpose of RCRA is not merely to control waste generation, waste management, or waste disposal. The title of the Act itself clearly reveals a major focus and intent – resource conservation and recovery. As discussed in chapter I, a major goal of RCRA is energy and natural resource conservation through reducing the depletion of our natural resources and to protect those resources from hazardous constituents. Another major goal of RCRA is resource recovery through extracting usable resources from materials that are unintentionally created (i.e., wastes).

Resource recovery or recycling requires separating and collecting wastes for their subsequent transformation or remanufacture into usable products and materials. Resource recovery is a major component of the RCRA program because it diverts large amounts of solid waste from landfills and incinerators, conserves space in landfills, recovers the precious raw materials that are often found in solid waste, and preserves natural resources that would otherwise be used to produce virgin products and materials.

To further this waste management approach, RCRA established specific provisions to promote the development of recycling capabilities and technologies, and develop a market for recyclable materials. As a result, the Statute contains provisions for technology and market development activities, as well as federal procurement requirements intended to bolster the demand for products containing recycled materials.

PROMOTION OF RECYCLING

When the Statute was enacted, the waste management and recycling industries were unable to maintain and promote substantial resource conservation and recovery of a wide range of materials. While specific industries, such as metals and glass recycling, were mature and developed, recycling of other commodities, such as old newspapers was not as advanced. While recycling was a major component of the regulatory program, there was neither the technology to recycle nor a market in which to sell and purchase such commodities. Without a market to sell or a demand to purchase recycled products, there was no incentive to perform recycling activities in the first place.

Congress recognized this opportunity within the recycling industry and sought ways to promote both recycling activities and market development. As a result, RCRA includes provisions requiring EPA to take steps to identify markets for recovered materials, identify economic and technical barriers to the use of recovered materials, encourage the development of new uses for recovered materials, and promote recycling technologies. In addition, RCRA requires the National Institutes of Standards and Technology to develop specifications for recycled materials to facilitate their reuse in replacing virgin materials in various industrial and commercial products.

FEDERAL PROCUREMENT REQUIREMENTS FOR RECOVERED CONTENT PRODUCTS

Realizing that recycling is not only the collection of materials for remanufacture, but also the purchase of products with recovered content by consumers, Congress sought ways to stimulate market demand for recycled materials. Congress realized that the purchasing power of the federal government, if focused on procuring products with recovered content, could create a significant demand for recycled materials thus stimulating the market. Increased demand by the federal government for products with recovered content would boost manufacturing of such items and encourage the private sector to purchase such goods as well. As a result, RCRA §6002 established a requirement for EPA to issue guidelines for the federal procurement of products containing recovered materials.

RCRA §6002 also requires procuring agencies to purchase those items composed of the highest percentage of recovered materials practicable. In short, it is the government's "buy-recycled" program.

Procuring agencies are defined as:

- Federal government departments or agencies
- State government agencies that use appropriated federal funds for procurement of a designated item
- Local government agencies that use appropriated federal funds for procurement of a designated item
- Government contractors that work on a project funded by appropriated federal funds, with respect to work performed under the contract.

Only procuring agencies that purchase $10,000 or more worth of a designated item during the course of their fiscal year, or that purchased at least $10,000 worth of a procurement item during the preceding fiscal year, are subject to these procurement requirements.

The Statute requires EPA to designate products that are or can be made from recovered materials, and to make recommendations concerning the procurement of items containing recovered materials. Procuring agencies can use these guidelines to meet these statutory requirements.

■ Comprehensive Procurement Guidelines

EPA designates items in a Comprehensive Procurement Guideline (CPG), which is updated periodically. Currently, there are 59 items designated within 8 product categories (see Figure V-1). These product categories are:

- Paper and Paper Products
- Vehicular Products
- Construction Products
- Transportation Products
- Park and Recreation Products
- Landscaping Products
- Nonpaper Office Products
- Miscellaneous Products.

Figure V-1: Designated Procurement Items

Paper and Paper Products
- Commercial/industrial sanitary tissue products
- Miscellaneous papers
- Newsprint
- Paperboard and packaging products
- Printing and writing papers

Vehicular Products
- Engine coolants
- Rebuilt vehicular parts
- Re-refined lubricating oils
- Retread tires

Construction Products
- Building insulation products
- Carpet
- Carpet cushion
- Cement and concrete containing coal fly ash, ground granulated blast furnace slag, cenospheres, silica fume
- Consolidated and reprocessed latex paint
- Floor tiles
- Flowable fill
- Laminated paperboard
- Modular threshold ramps
- Nonpressure pipe
- Patio blocks
- Railroad grade crossing surfaces
- Roofing materials
- Shower and restroom dividers/partitions
- Structural fiberboard

Transportation Products
- Channelizers
- Delineators
- Flexible delineators
- Parking stops
- Traffic barricades
- Traffic cones

Parks and Recreation Products
- Park benches and picnic tables
- Plastic fencing
- Playground equipment
- Playground surfaces
- Running tracks

Landscaping Products
- Compost made from recovered organic materials
- Fertilizer made from recovered organic materials
- Garden and soaker hoses
- Hydraulic mulch
- Lawn and garden edging
- Plastic lumber landscaping timbers and posts

Non-paper Office Products
- Binders, clipboards, file folders, clip portfolios, and presentation folders
- Office furniture
- Office recycling containers
- Office waste receptacles
- Plastic desktop accessories
- Plastic envelopes
- Plastic trash bags
- Printer ribbons
- Toner cartridges

Miscellaneous Products
- Awards and plaques
- Bike racks
- Blasting grit
- Industrial drums
- Manual-grade strapping
- Mats
- Pallets
- Signage
- Sorbents

■ Recovered Materials Advisory Notice

For each item designated in the CPG, EPA also publishes corresponding and guidance in a **Recovered Materials Advisory Notice** (RMAN) (see Figure V-2). EPA recommends recovered content levels and provides information on specifications for purchasing a particular item and other pertinent purchasing information.

■ Affirmative Procurement Program

If an agency meets the definition of a procuring agency and is purchasing a certain dollar amount of a designated item, that agency is required to purchase items with the highest levels of recovered content practicable. An agency may elect not to purchase designated items only when the cost is unreasonable, items are not available within a reasonable period of time, or items do not meet the agency's reasonable performance specifications. Within one year after EPA designates an item, procuring agencies must revise their product specifications to require the use of recovered materials and to eliminate administrative barriers to the use of materials with recovered content, such as removing purchasing provisions that prohibit the use of recovered materials or require the exclusive use of virgin materials.

Within one year after EPA designates an item, each procuring agency must develop an affirmative procurement program for each designated item, setting forth the agency's policies and procedures for implementing the requirements.

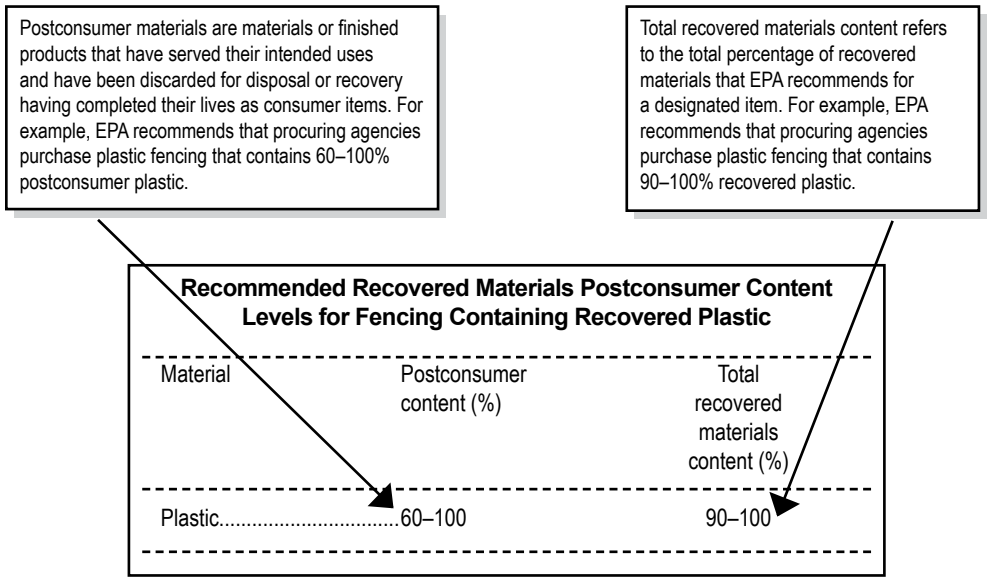
The affirmative procurement program consists of four parts:

- Preference program
- Promotion program
- Estimation, certification, and verification provisions
- Monitoring and review program.

Preference Program

The preference program is a means by which an agency shows its preference for products made with recovered materials. It may consist of established minimum content standards, a case-by-case approach when the minimum content standard is inappropriate, or an equivalent alternative. Minimum content standards specify the minimum amount of recovered materials that designated items should contain. Agencies can adopt these standards on an agency-wide basis for all procurement actions. Case-by-case policy development allows the procuring agency to establish a separate recovered

Figure V-2: Sample Recovered Materials Advisory Notice Content Level Specification



materials content requirement for a specific procurement action, while still enabling the agency to procure other designated products with the highest amount of recovered materials practicable. The procuring agency can also choose an alternative that is equivalent to either of these options, such as contracting for recycling of spent engine coolant.

Promotion Program

Through the promotion program, the agency must actively promote its desire to buy recycled products, both internally within the agency and externally to product vendors. Internal promotion usually is a broad-based employee education program that affirms an agency's procurement policy through advertising, workshops, agency newsletters, and technical and staff manuals. Examples of external promotion include publishing articles in trade journals, participating in vendor shows or trade fairs, placing statements in bid solicitations, and discussing an agency's procurement policy at bidders' conferences.

Estimation, Certification, and Verification Provisions

Agencies should use standard contract provisions to estimate, certify, and, where appropriate, reasonably verify the recovered materials content in a product procured by an agency.

Monitoring and Review Program

The monitoring and review program requires agencies to monitor affirmative procurement programs to ensure that they are fulfilling their obligation to purchase items composed of recovered materials.

■ Compliance

Once EPA designates an item in the CPG, the responsibility for complying with the procurement program rests with the procuring agency. There are no provisions in the Statute for federal enforcement of the guidelines. On the other hand, RCRA §7002 citizen suit provisions allow citizens to sue in U.S. District Court to seek relief against any person alleged to be in violation of the requirements of the Act, including the procurement requirements.

(Citizen suit provisions are fully discussed in Chapter III, Enforcement of Hazardous Waste Regulations).

SUMMARY

In order to further RCRA's resource, conservation, and recovery goals, the Statute includes provisions to promote recycling and market development. RCRA created federal procurement requirements to create a significant demand for products with recovered content, boost manufacturing of such products, and encourage the private sector to purchase such goods as well.

The procurement requirements apply to procuring agencies that purchase $10,000 or more worth of a designated item during the course of their fiscal year, or that purchased at least $10,000 worth of a procurement item during the preceding fiscal year.

Procuring agencies are defined as:

- Federal government departments or agencies
- State government agencies that use appropriated federal funds for procurement of a designated item
- Local government agencies that use appropriated federal funds for procurement of a designated item
- Government contractors that work on a project funded by appropriated federal funds, with respect to work performed under the contract.

RCRA §6002 requires procuring agencies to purchase designated recycled-content items of the highest percentage or recovered content practicable.

Each procuring agency must develop an affirmative procurement program for each designated item, setting forth the agency's policies and procedures for implementing the requirements. This program consists of four parts:

- Preference program
- Promotion program
- Estimation, certification, and verification program
- Monitoring and review program.

ADDITIONAL RESOURCES

Additional information about the topics covered in this chapter can be found at www.epa.gov/cpg.

MEDICAL WASTE REGULATIONS

OVERVIEW

During the summer of 1988, syringes and other used medical materials washed up on beaches along the Atlantic seaboard. In response to public concern about this problem, Congress enacted the Medical Waste Tracking Act in November 1988, which added medical waste tracking provisions in RCRA Subtitle J. The Medical Waste Tracking Act directed EPA to establish a two-year demonstration program for the tracking and management of medical waste. Under this statutory authority, EPA codified regulations in 40 CFR Part 259 identifying the medical wastes to be tracked and creating management standards for handlers of medical waste. The States of Connecticut, New Jersey, New York, Rhode Island, and the Commonwealth of Puerto Rico all participated in the two-year tracking program. For purposes of this program, they were known as **covered states**. This demonstration program began June 22, 1989, and ended June 22, 1991. Two interim reports were submitted to Congress in 1990. Currently, the program is expired and no federal medical waste tracking and management regulations are in effect. As a result, the provisions in Part 259 have been removed from the CFR. States, however, have become active in managing medical waste and a majority has developed programs similar to the federal model. This chapter will discuss what was considered medical waste under the two-year demonstration program.

WHAT WAS REGULATED MEDICAL WASTE?

Regulated Medical waste included:

- Cultures and stocks of infectious agents
- Human pathological wastes (e.g., tissues, body parts)
- Human blood and blood products
- Used sharps (e.g., hypodermic needles and syringes used in animal or human patient care)
- Certain animal wastes
- Certain isolation wastes (e.g., wastes from patients with highly communicable diseases)
- Unused sharps (e.g., suture needles, scalpel blades, hypodermic needles).

For purposes of the demonstration program, the definition of medical waste excluded household waste. In addition, residues from treatment and destruction processes, or from the incineration of regulated medical wastes, were not considered medical waste, nor were human remains intended to be buried or cremated. Etiologic agents (i.e., infectious substances) being shipped pursuant to other federal regulations, and samples of medical waste that were shipped for enforcement purposes were exempt from the 40 CFR Part 259 requirements.

MEDICAL WASTE VS. HAZARDOUS WASTE

Because medical wastes met the RCRA regulatory definition of solid waste, these wastes were also subject to the Subtitle C hazardous waste characterization. In other words, once a facility identified a waste as a medical waste, it then had to determine if this waste was also listed or characteristic. (The hazardous waste identification process is fully discussed in Chapter III, Hazardous Waste Identification). If medical waste was a hazardous waste, it was subject to the Subtitle C hazardous waste requirements. When the Subtitle J medical waste tracking standards were in place, such hazardous medical wastes were excluded from the tracking requirements and were subject to those requirements in RCRA Subtitle C.

THE DEMONSTRATION PROGRAM

The medical waste tracking demonstration program set up provisions for tracking medical waste from the generator to the disposal site, similar to Subtitle C's hazardous waste manifest system. The program was designed to ensure proper handling, tracking, and disposal of medical waste. The system required that a tracking form accompany the waste and a signed copy be retained by the generator, each transporter, transfer station, and the treatment, destruction, and disposal facility that handled the waste. When the final disposal facility accepted the waste, a copy of the signed tracking form was returned to the generator. Through this process, the generator was assured that the waste was actually received for disposal. The tracking program also included exception and discrepancy reporting to alert EPA and the states if wastes were not being handled properly.

To minimize contact with medical wastes by workers, handlers, and the public, the program also included specific requirements for segregation, packaging, labeling, marking, and storing of medical wastes before they were shipped to another site for treatment, destruction, or disposal.

The demonstration program focused on three groups of medical waste handlers:

- Generators
- Transporters
- Treatment, destruction, and disposal facilities.

■ Generators

A medical waste **generator** was any person whose act or processes produced medical waste or caused medical waste to become subject to regulation. These tracking provisions applied to persons or facilities that generated 50 pounds or more of medical waste in a month and shipped such waste off site. These generators were required to separate, package, label, mark, and track medical wastes according to the regulations. Generators producing and shipping less than 50 pounds a month were required to prepare their wastes properly for shipment, but could use a log to account for wastes instead of a tracking form.

With the exception of medical waste burned in on-site incinerators, generators who disposed of medical wastes on site or in a sewer system were not covered by the tracking requirements of this program. Similarly, wastes that were treated and destroyed or disposed of on site or in sewers were not counted as part of the 50-pound monthly total. Generators burning waste in on-site incinerators were required to report the volume of waste burned. All medical wastes, even those that were to be treated, destroyed, and disposed of on site, were required to be stored properly.

These provisions applied to medical wastes generated by federal facilities in covered states. These provisions also applied to ships and ocean vessels that brought medical wastes to shore by docking in a covered state.

■ Transporters

A medical waste transporter was any person engaged in the off-site transportation of medical waste by air, rail, highway, or water. Transporters were required to notify EPA of their intent to comply with the tracking program before they could accept medical waste for transport. Transporters were required to follow rules governing the transport, tracking, recordkeeping, and reporting of waste shipments. They were also required to make sure

that the wastes they accepted for transport had been properly prepared for shipping and that the tracking form was accurate.

■ Treatment, Destruction, and Disposal Facilities

Treatment facilities were facilities that changed the biological character or composition of medical waste to substantially reduce or eliminate its potential for causing disease. Destruction facilities were facilities that destroyed medical waste by mutilating it, or tearing it apart to render it less infectious and unrecognizable as medical waste. Once medical waste was properly treated and destroyed, it no longer needed to be tracked. These treatment and destruction facilities included incinerators and treatment operations that ground, steam-sterilized, or treated the waste with chemicals, heat, or radiation. Disposal facilities were facilities where medical waste was placed in or on the land (e.g., landfills).

The demonstration program did not regulate the operation of these treatment, destruction, and disposal processes, but rather required tracking from generation to disposal and recordkeeping. When the wastes were accepted for disposal, these facilities had to send a signed copy of the tracking form back to the generator or initiator of the tracking form. The facility owners and operators were required to investigate any discrepancies between the accompanying papers and the shipments they received. If after investigation there was still a discrepancy, they were required to report to EPA and the generator's state agency. Once treated and destroyed, however, such wastes were no longer subject to the tracking requirements.

INTERSTATE SHIPMENTS

While only the States of Connecticut, New Jersey, New York, Rhode Island, and the Commonwealth of Puerto Rico participated in the tracking program, the medical waste tracking provisions also applied when shipments originating in these covered states were transported to states that did not participate in the program.

According to the provisions of the tracking program, if medical waste was generated in a covered state, any subsequent handling by a transporter or treatment, destruction, and disposal facility in that state, another covered state, or a noncovered state was subject to the tracking provisions. For example, if a medical waste was generated in New Jersey (a covered state) and transported by truck to Pennsylvania (a noncovered state) for treatment and disposal, the waste would still be subject to the medical waste tracking provisions since the waste was originally generated in a covered state.

CURRENT REQUIREMENTS

While medical waste is not regulated under the current federal RCRA regulations, there are federal requirements for medical waste under the Clean Air Act (CAA) and the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA).

In 1997, under CAA, EPA established new source performance standards (NSPS) and emissions guidelines to reduce air emissions from new and existing hospital, infectious, and medical waste incinerators. These guidelines also established standards for incinerator operator training and qualification, equipment inspections, and siting EPA estimates that as of September 2009, there are approximately 57 such incinerators in operation in the United States that combust medical and infectious waste annually.

SHIPMENTS TO STATES NOT PARTICIPATING IN THE DEMONSTRATION PROGRAM

While only the Commonwealth of Puerto Rico and the States of Connecticut, New Jersey, New York, and Rhode Island participated in the tracking program, the medical waste tracking provisions also applied when shipments originating in these covered states were transported to states that did not participate in the program.

Under FIFRA, antimicrobial pesticides and chemicals used in medical waste treatment technologies must be registered with EPA.

SUMMARY

Congress enacted the Medical Waste Tracking Act in November 1988, which added medical waste tracking provisions to RCRA Subtitle J. The Act directed EPA to establish a two-year demonstration program for the tracking of medical waste. The States of Connecticut, New Jersey, New York, Rhode Island, and the Commonwealth of Puerto Rico all participated in the tracking program. This demonstration program began June 22, 1989, and ended June 22, 1991. Currently, the program is expired and no federal tracking regulations are in effect. States, however, have become active in managing medical waste and many have developed programs similar to the federal model.

Medical wastes included:

- Cultures and stocks of infectious agents
- Human pathological wastes (e.g., tissues, body parts)
- Human blood and blood products
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- Unused sharps (e.g., suture needles, scalpel blades, hypodermic needles).

The medical waste demonstration program set up provisions for tracking the waste from the generator to the disposal site, similar to Subtitle C's hazardous waste manifest system.

The demonstration program focused on three groups of medical waste handlers:

- Generators
- Transporters
- Treatment, destruction, and disposal facilities.

The medical waste tracking provisions also applied when shipments originating in states covered by the program were transported to states that did not participate in the program.

While medical waste is not regulated under the current federal RCRA regulations, there are federal requirements for medical waste under the Clean Air Act (CAA) for medical waste incinerators and under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) for pesticides and chemicals used in medical waste treatment technologies.

ADDITIONAL RESOURCES

Additional information about medical waste regulations can be found at www.epa.gov/epawaste/nonhaz/industrial/medical.